

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STEVEN NOFFSINGER,)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	Case No. 09 CV 916
THE VALSPAR CORPORATION, a Delaware)	
Corporation, d/b/a C&M COATINGS and d/b/a)	
VALSPAR INDUSTRIAL, and ENGINEERED)	Judge Robert W. Gettleman
POLYMER SOLUTIONS, INC., d/b/a)	
VALSPAR COATINGS, a Delaware)	Magistrate Geraldine Soat Brown
corporation,)	
)	
Defendants.)	

**JOINT MOTION TO RESET REMAINING EXPERT DISCLOSURE AND
DEPOSITION DEADLINES**

Plaintiff, Steven Noffsinger (“Noffsinger”), through his counsel, David A. Axelrod, Robert A. Cohen, and Jason M. Kleinman, and Defendants, The Valspar Corporation and Engineered Polymer Solutions, Inc. (collectively “Valspar”), through their counsel, Andrew Detherage and Terri Bruksch, move jointly to modify certain expert disclosure and deposition deadlines set prior to the January 7, 2013 mediation of this matter. In support of the joint motion, state as follows.

1. On December 20, 2012, the parties appeared before this Court on oral argument of certain expert-related motions *in limine*, Valspar’s motions related to Dr. Karin Pacheco’s status as a witness in this case, and Plaintiff’s motion to substitute an expert occasioned by the passing of Plaintiff’s causation expert, Dr. Thomas Milby. This Court took the Motions under advisement. This Court also ordered that Noffsinger would be entitled to one-hour depositions

of three of Valspar's experts, Dr. Greenberg, Dr. Wedner, and Mr. Cohen, concerning their supplemental disclosures with respect to e-cigarettes.

2. On January 4, 2013, this Court issued written rulings with respect to the Motions that were heard on December 20, 2012. All of the Motions were denied in material part. Among other things, this Court determined that Dr. Pacheco would be permitted to testify as a Rule 26(a)(2)(A) treating physician, and as a Rule 26(a)(2)(B) causation expert, pursuant to certain conditions. By Order dated January 4, 2013 (Dkt. No. 382), this Court set the following deadlines:

- (a) Dr. Pacheco to make supplemental disclosure described in the Court's January 4, 2013 Order on or before January 25, 2013;
- (b) Valspar to make supplemental disclosures with respect to Dr. Pacheco, undertake an Independent Medical Examination of Mr. Noffsinger, if desired, and take Dr. Pacheco's deposition on or before February 22, 2013.

3. On January 7, 2013, the parties voluntarily submitted the case to mediation before retired judge Honorable Dennis Burke. The parties did not settle the case.

4. Following the mediation, the parties were unable to schedule Dr. Pacheco's deposition for a date prior to February 22, 2013, due to various scheduling conflicts. For that reason, the parties are seeking to enlarge the time to take Dr. Pacheco's deposition. The parties are also seeking to enlarge the deadline for Dr. Pacheco to make her disclosures, and for Valspar to take an IME, if it chooses to do so. In addition, to avoid the need for two depositions of Valspar's experts, the parties have agreed to seek this Court's permission to take one consolidated deposition of Defendants' experts with respect to all supplemental disclosures, including e-cigarettes and Dr. Pacheco's new disclosure, which would take place following their disclosures regarding Dr. Pacheco.

5. The parties have made further efforts to schedule the remaining tasks before this Court, working out differences in the process, and are seeking this Court's approval of the following deadlines:

- (a) Plaintiff to make the supplemental disclosure as to Dr. Pacheco required by the Court's January 4, 2013 Order on or before February 7, 2013;
- (b) Dr. Pacheco's deposition to be taken on February 27, 2013 and February 28, 2013;
- (c) Valspar to complete any IME and, assuming IME is completed, make supplemental disclosures as to Dr. Pacheco on or before March 28, 2013;
- (d) Plaintiff to take supplemental depositions of Dr. Wedner and Dr. Greenberg, with respect to e-cigarettes and Dr. Pacheco's disclosure, for a maximum of two hours each, and Mr. Cohen's deposition with respect to e-cigarettes, for a maximum of one hour, on or before April 30, 2013.

WHEREFORE, Defendants, The Valspar Corporation and Engineered Polymer Solutions, Inc., and Plaintiff, Steven Noffsinger, jointly request that the Court enter an Order resetting the remaining expert disclosure and deposition deadlines, and for such other relief as this Court deems fair and just.

Dated: January 22, 2013

Respectfully submitted,

STEVEN NOFFSINGER

/s/ Robert A. Cohen

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